IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Crl.L.P..No. 371 of 2007()

ST.26/2006 of J.M.F.C. - III, KOLLAM

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PETITIONER/COMPLAINANT:

M/S.TRANSWORLD HIRE PURCHASE INDIA LTD.,
A CO. REGD. UNDER THE INDIAN COMPANIES ACT HAVING ITS REGD.OFFICE AT TRANSWORLD TOWERS, BUSINESS LANE BEACH RD.,KOLLAM REP. BY POWER HOLDER MR.UNNIKRI-S HNANA NAIR, S/O.VELAYUDHAN NAIR, MANAGER,TRANSWORD HIRE PURCHASE INDIA LTD., KOLLAM.

BY ADV. SRI.RAJA VIJAYARAGHAVAN
SRI.M.T.SURESHKUMAR

RESPONDENTS: ACCUSED AND STATE:
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1. S.JOY, SRI VIHAR, ADICHANALLOOR, KOLLAM.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2-BY P.P.SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.371 OF 2007

Dated this the 21st day of June, 2007.

JUDGMENT

This is an application for special leave to appeal against the judgment in S.T.No.26/2006 on the file of the Judicial Magistrate of First Class-III, Kollam. As per the complaint filed by the petitioner/complainant it was stated that there was a hire purchase agreement regarding a vehicle between the petitioner/complainant and the 1st respondent and on the basis of the terms and conditions of that agreement, if any instalments are due, that can be recovered from the 1st respondent with interest. It was further stated in the complaint that the 1st respondent had defaulted four instalments for which he had issued a cheque. But, when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund with the account of the 1st respondent. On getting intimation and on re-possessing the vehicle, the petitioner/complainant proceeded with the matter by filing a complaint alleging that the 1st respondent had committed an offence punishable under Section 138 of the N.I.Act.

2. To prove the case against the 1st respondent, Manager of M/s. Transworld Hire Purchase India was examined as PW1 and Exts.P1 to P7 were also produced. Denying the allegations in the complaint, the 1st respondent had stated in his 313 statement that he had purchased the vehicle – a Mahindra Jeep on hire purchase agreement and as he had defaulted certain instalments, the vehicle had been re-possessed by closing the account on the basis of the terms and conditions in the hire purchase agreement. He had further stated that the cheque produced in the complaint was one of the four post dated cheques which he had given at the time of the hire purchase agreement. If so, the case set up by the 1st respondent that after re-possessing the vehicle the instalments already defaulted cannot be recovered on the basis of the cheques issued as the said amount could be recovered as per the terms and condition of the hire purchase agreement. This principle has been issued by this Court in the judgment reported in **Sudha Beevi v. State of Kerala** (2004 (2) KLT 746) and this Court found that once an account has to be settled as per the terms and conditions of the hire purchase agreement, the post dated cheques cannot create any liability on the drawer.

3. In the above circumstances and from the facts revealed, the trial court had appreciated the evidence and found that the petitioner/complainant failed to prove that the 1st respondent had committed any offence punishable under Section 138 of the N.I.Act and the liability, if any created under the cheque in question, is not a legally enforcible debt as per the provisions of Section 138 of the N.I.Act. Accordingly, the judgment of the trial court requires no interference by this Court.

The application for special leave to appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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